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ROUTING AND RECORD SHEET

SUBJECT: (Optional) Dept. of State draft bill providing security for [redacted] U.S. diplomatic personnel, facilities and operations

FROM:	EXTENSION	NO. OLC 85-3291/2
STAT DDO		DATE

TO: (Officer designation, room number, and building)	DATE RECEIVED	DATE FORWARDED	OFFICER'S INITIALS	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
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FORM 1-79 610 USE PREVIOUS EDITIONS

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UNDER SECRETARY OF STATE
FOR MANAGEMENT
WASHINGTON

October 25, 1985

Dear Mr. Miller:

Enclosed is a draft bill to provide for the security of United States diplomatic personnel, facilities and operations, and for other purposes.

In June of this year the Secretary of State's Advisory Panel on Overseas Security, chaired by Admiral Bobby R. Inman, concluded its work and issued its Report. The Report contained 91 recommendations designed to strengthen the Department of State's security program to meet the difficult challenges posed by terrorism directed at diplomatic personnel, facilities and operations. This draft bill is based upon the Report and recommendations of the Advisory Panel.

The proposed legislation contains three principal features.

First, it sets forth the responsibility of the Secretary of State with respect to the security of diplomatic operations at home and abroad. It also provides for the Bureau of Diplomatic Security of the Department of State to be headed by an Assistant Secretary of State and sets forth certain provisions relating to the Diplomatic Security Service of the Department of State.

Second, the proposed legislation calls for the Secretary of State to convene Accountability Review Boards to investigate incidents involving serious injury, loss of life or

The Honorable
James C. Miller, III,
Director,
Office of Management and Budget.

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significant destruction of property at or related to United States Government missions abroad (than than military installations). As part of the accountability review process, the board convened in response to an incident would not only make findings and recommendations relating to security generally; it would also determine whether, and in what ways, a breach of duty by an individual employee contributed to the incident, and it would make appropriate disciplinary recommendations. The employee concerned would have the benefit of a full hearing and the procedural protection afforded by the Administrative Procedure Act.

Third, the proposed legislation provides an authorization of appropriations in the amount of $520,828,000 for Fiscal Year 1986, $420,625,000 for Fiscal Year 1987, and $3,177,441,000 without fiscal year limitation, to enable the Department to fulfill its security-related responsibilities. The amounts authorized for Fiscal Years 1986 and 1987 are for Salaries and Expenses. The amount authorized without fiscal year limitation is for the substantial building program which was recommended by the Advisory Panel as necessary to ensure an adequate level of security for United States Government employees and missions abroad.

With best wishes,

Sincerely,

Ronald I. Spiers

Enclosure: Bill and Analysis.

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DRAFT BILL

To provide for the security of United States diplomatic personnel, facilities and operations, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. SHORT TITLE.

This Act may be cited as the "Diplomatic Security Act."

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.--The Congress finds and declares that--

(1) the United States has a crucial stake in the presence of United States Government employees representing United States interests abroad; and

(2) conditions confronting United States Government employees and missions abroad are fraught with security concerns which will continue for the foreseeable future.

(3) the resources now available to counter acts of terrorism and protect and secure United States Government employees and missions abroad, as well as foreign officials and missions in the United States, are inadequate to meet the mounting threat to such personnel and facilities.

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(b) PURPOSES.--The purposes of this Act are--

(1) to set forth the responsibility of the Secretary of State with respect to the security of diplomatic operations in the United States and abroad;

(2) to provide for an Assistant Secretary of State to head the Bureau of Diplomatic Security of the Department of State, and to set forth certain provisions relating to the Diplomatic Security Service of the Department of State;

(3) to maximize coordination by the Department of State with Federal, State and local agencies and agencies of foreign governments in order to enhance security programs;

(4) to promote strengthened security measures and to provide for the accountability of United States Government employees with security-related responsibilities; and

(5) to provide authorization of appropriations for the Department of State to carry out its responsibilities in the area of security and counterterrorism, and in particular to finance the acquisition and improvements of United States Government missions abroad, including real property, buildings, facilities, and communications, information and security systems.

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TITLE I--DIPLOMATIC SECURITY

SEC. 101. RESPONSIBILITY OF THE SECRETARY OF STATE.

(a) SECURITY FUNCTIONS.--The Secretary of State shall develop and implement in consultation with other agencies having personnel or missions abroad, within the scope of the resources made available, policies and programs to provide for the security of United States Government operations of a diplomatic nature and foreign government operations of a diplomatic nature in the United States, to include--

(1) protection of all United States Government employees on official duty abroad, other than those under the command of a United States area military commander, and their accompanying dependents;

(2) establishment and operation of security functions at all United States Government missions abroad, other than facilities or installations subject to the control of a United States area military commander;

(3) establishment and operation of security functions at all Department of State facilities in the United States; and

(4) protection of foreign missions, international organizations and foreign officials and other foreign persons in the United States, as authorized by law.

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(b) ASSISTANCE.--Other Federal agencies shall cooperate to the maximum extent possible with the Department of State and, upon request and with or without reimbursement, may provide assistance to the Department of State, including performance of such overseas security functions as may be authorized by the Secretary of State, to facilitate fulfillment of the responsibilities described herein. Upon request and with or without reimbursement, the Department of State may provide training assistance and related equipment to host government personnel assigned to protect United States Government employees and missions abroad.

(c) CHIEF OF MISSION.--Nothing contained herein shall be construed to limit the authority or responsibility of a chief of mission under section 207 of the Foreign Service Act of 1980, as amended (22 U.S.C. 3927).

(d) OTHER AGENCIES.--Nothing contained herein shall be construed to limit the authority or responsibility of any other Federal, State or local agency with respect to law enforcement or domestic security operations.

(e) CERTAIN LEASE ARRANGEMENTS.--The Administrator of General Services is authorized to lease up to 250,000 square feet for the Department of State to accommodate the personnel required to carry out the purposes of this Act.

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SEC. 102. BUREAU OF DIPLOMATIC SECURITY.

(a) ASSISTANT SECRETARY.--The Bureau of Diplomatic Security of the Department of State shall be headed by an Assistant Secretary of State.

(b) NUMBER OF ASSISTANT SECRETARIES.--The first section of the Act entitled "An Act to strengthen and improve the organization and administration of the Department of State, and for other purposes," approved May 26, 1949 (22 U.S.C. 2652), is amended by striking out "fourteen" and inserting in lieu thereof "fifteen".

(c) POSITIONS AT LEVEL IV OF THE EXECUTIVE SCHEDULE.--Section 5315 of title 5, United States Code, is amended by striking out "(14)" following "Assistant Secretaries of State" and inserting in lieu thereof "(15)".

SEC. 103. DIPLOMATIC SECURITY SERVICE.

(a) DIRECTOR.--The Diplomatic Security Service of the Department of State shall be headed by a Director designated by the Secretary of State. The Director shall be a member of the career Senior Foreign Service or the career Senior Executive Service and shall be qualified for the position by virtue of demonstrated ability in the area of security, law enforcement, management or public administration. Experience in management or operations at overseas diplomatic posts shall be considered an affirmative factor in the selection of the Director. The Director shall act under the supervision and direction of an Assistant Secretary of State.

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(b) ASSIGNMENT AND APPOINTMENT.--Positions in the Diplomatic Security Service shall be filled in accordance with the provisions of the Foreign Service Act of 1980, as amended (22 U.S.C. 3901 et seq.), and title 5, United States Code. The Secretary of State shall prescribe the qualifications required for assignment or appointment to such positions. In the case of positions designated for Special Agents, the qualifications may include minimum and maximum entry age restrictions and other physical standards, and shall incorporate such standards as may be required by law in order to perform security functions, to bear arms and to exercise investigatory, warrant, arrest and such other authorities as are available by law to Special Agents of the Department of State and the Foreign Service. The regulations to be prescribed by the Secretary with respect to such Special Agents, pursuant to section 37 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2709), may provide for such special disciplinary procedures as are deemed necessary to carry out the purposes of this Act.

(c) FUNCTIONS.--The Diplomatic Security Service shall perform such functions as may be assigned to it by the Secretary of State.

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TITLE II--PERFORMANCE AND ACCOUNTABILITY

SEC. 201. ACCOUNTABILITY REVIEW.

In any case of serious injury, loss of life or significant destruction of property at or related to a United States Government mission abroad, other than a facility or installation subject to the control of a United States area military commander, the Secretary of State shall convene an Accountability Review Board (hereinafter in this title referred to as the "Board"); provided, however, that no such Board shall be convened in a case clearly involving only causes unrelated to security, or in a case clearly involving no breach of duty by a United States government employee.

SEC. 202. ACCOUNTABILITY REVIEW BOARD.

(a) MEMBERSHIP.--The Board shall consist of not less than three nor more than five members, including a Chairperson, designated by the Secretary of State. In any case in which an employee of an agency other than the Department of State receives a notification under section 206(a), the Board shall be expanded to include one member designated by the head of such agency.

(b) FACILITIES, SERVICES, SUPPLIES AND STAFF.--

(1) SUPPLIED BY DEPARTMENT OF STATE.--The Board shall obtain facilities, services and supplies through the

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Department of State. All expenses of the Board, including necessary costs of travel, shall be paid by the Department of State, except that the costs of a hearing under section 206 shall be paid by the agency employing the individual concerned.

(2) DETAIL.--At the request of the Board, employees of the Department of State or other Federal agencies, members of the Foreign Service or uniformed members of the military services may be temporarily assigned, with or without reimbursement, as staff employees for the Board. Upon request, an inspector general of the Department of State may provide assistance to the Board.

(3) EMPLOYEES, EXPERTS AND CONSULTANTS.--The Board may appoint and fix the pay of such other employees, experts and consultants, who shall be responsible solely to the Board, as the Board considers necessary to carry out its functions.

SEC. 203. PROCEDURES.

(a) EVIDENCE.--The Board is authorized to administer oaths and affirmations and require that depositions be given and interrogatories answered. The Board may issue or authorize the issuance of a subpoena for the attendance and testimony of witnesses and the production of documentary or other evidence from any person or agency in such instances where the Board or

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the employee presiding at a hearing under section 206 finds that such a subpoena is necessary in the interests of justice for the development of relevant, admissible evidence. In the case of contumacy or refusal to obey, such subpoena shall be enforceable on application of the Board by order of any appropriate United States district court. Witnesses who are not employees of the federal government shall be paid the same fee and mileage allowances which are paid subpoenaed witnesses in the courts of the United States.

(b) CONFIDENTIALITY.--The Board shall adopt for administrative proceedings under this title such procedures with respect to confidentiality as may be deemed necessary, including procedures relating to the conduct of closed proceedings or the submission and use of evidence in camera, to ensure in particular the protection of sensitive information relating to national defense, foreign policy or intelligence sources and methods.

(c) RECORDS.--Records pertaining to administrative proceedings under this title shall be separated from all other records of the Department of State, and shall be maintained under appropriate safeguards to preserve confidentiality and classification of information. Such records shall be exempt from disclosure to the public under section 552(b) of title 5, United States Code.

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SEC. 204. FINDINGS.

The Board convened in any case shall make written findings determining--

(1) whether there are reasonable grounds to believe that the injury, loss of life or destruction of property with respect to which the Board was convened was security-related; and

(2) whether there is probable cause to believe that a breach of duty by a United States Government employee contributed to such injury, loss of life or destruction of property.

In making its findings, the Board shall take into account such standards of conduct, statutes, rules, regulations, instructions and other sources as may have been pertinent to the performance of work and official duties.

SEC. 205. PROGRAM RECOMMENDATIONS.

The Board shall make recommendations as appropriate to improve the efficiency, economy, suitability or security of any program or operation which the Board has reviewed. In particular, the Board shall make recommendations as appropriate to promote security awareness and individual accountability for security programs.

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SEC. 206. HEARING SUBJECT TO THE ADMINISTRATIVE PROCEDURE ACT.

(a) NOTICE.--In any case in which the Board makes an affirmative finding of probable cause under section 204, it shall promptly notify the employee concerned. In the event that the employee is under the command of a United States area military commander, however, the Board shall notify the head of the military service involved and recommend that an appropriate investigatory or disciplinary proceeding be initiated, which proceeding shall be in lieu of the proceeding provided for in this section.

(b) FILING AND HEARING.--Not later than 30 days after receipt of notification under subsection (a), the employee may file with the Board a written request for a hearing. Such a hearing shall be conducted as a hearing on the record within the meaning of the Administrative Procedure Act (5 U.S.C. 551 et seq.), and sections 554(b) through 557 of title 5, United States Code, shall apply. The officer presiding at the hearing shall decide initially, and the Board shall decide finally, whether and in what ways a breach of duty by the employee contributed to the injury, loss of life or destruction of property with respect to which the Board was convened. Such decisions shall take into account the sources referred to in section 204 pertaining to the performance of work and official duties.

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(c) DISCIPLINARY RECOMMENDATIONS.--The Board shall recommend to the Secretary of State, or the head of the employing agency if other than the Department of State, disciplinary action as appropriate. The Board shall transmit to the Secretary or head of such agency a certified copy of the record of the proceeding, which shall be the official record for all purposes of any disciplinary action against the employee concerned, except that the employee may make additional written submissions to the Secretary or head of such agency.

(d) BAR.--In any case in which an employee fails to file a timely request for a hearing under subsection (b), the Board may proceed to recommend disciplinary action as appropriate, and such action may be taken by the Secretary of State or the head of the employing agency if other than the Department of State, without a hearing. Such failure by an employee to file a timely request for a hearing shall bar recourse by or on behalf of that employee to any administrative proceeding--

(1) based on a finding, recommendation or other action of the Board;

(2) based on an action taken pursuant to a finding, recommendation or other action of the Board; or

(3) relating to the occurrence of injury, loss of life or destruction of property with respect to which the Board was convened.

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SEC. 207. CERTAIN AGENCY ACTIONS.

(a) ADMINISTRATIVE LEAVE.--Following notification to an employee of an affirmative finding of probable cause under section 204, that employee shall be placed on administrative leave for such period or periods as the Secretary of State, or the head of the employing agency if other than the Department of State, determines to be consistent with the interests of the United States.

(b) DISCIPLINARY ACTION.--Not later than 30 days after a disciplinary recommendation is made by the Board pursuant to section 206, the Secretary of State, or the head of the employing agency if other than the Department of State, shall take such action as is deemed appropriate and shall report to the Board on such action.

SEC. 208. TRANSMISSION OF REPORTS.

The Board shall promptly transmit to the Secretary of State, or the head of the employing agency if other than the Department of State, all findings, decisions and recommendations made pursuant to sections 204 through 206. The Secretary of State or head of such agency shall promptly report to the Congress on all recommendations of the Board, as well as on any action taken with respect to such recommendations.

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SEC. 209. EXCLUSIVE PROCEDURE.

Notwithstanding any other provision of law, no action taken with respect to an employee pursuant to this title shall be considered grounds for a grievance action under chapter 11 of the Foreign Service Act of 1980, as amended (22 U.S.C. 4131-4140), an appeal of an adverse action under chapters 75 and 77 of title 5, United States Code, or other similar action by or on behalf of that employee under any administrative procedure of any agency of the United States or under any written agreement entered into between such agency and a labor or employee organization.

SEC. 210. JUDICIAL REVIEW.

Any aggrieved individual may obtain judicial review of disciplinary action taken pursuant to this title in the district courts of the United States in accordance with the standards set forth in chapter 7 of title 5, United States Code.

TITLE III--AUTHORIZATION OF APPROPRIATIONS

SEC. 301. AUTHORIZATION.

In addition to amounts otherwise authorized to be appropriated, there are authorized to be appropriated to the Department of State for "Administration of Foreign Affairs" for

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the purposes of this Act $520,828,000 for Fiscal Year 1986, $420,625,000 for Fiscal Year 1987, and $3,177,441,000 without fiscal year limitation.

SEC. 302. FOREIGN BUILDINGS PROGRAM.

In the implementation of any foreign buildings program funded from amounts authorized by section 301, the Foreign Buildings Office of the Department of State shall utilize, to the maximum extent possible, American contractors from the private sector.

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Section-by-Section Analysis

AN ACT
TO PROVIDE FOR THE SECURITY OF
UNITED STATES DIPLOMATIC PERSONNEL,
FACILITIES AND OPERATIONS, AND FOR OTHER PURPOSES

Section 1 - Short Title

The Act may be cited as the "Diplomatic Security Act."

Section 2 - Findings and Purpose

The Diplomatic Security Act is a response to the new and profoundly difficult security-related challenges confronting United States Government employees and missions abroad, as well as foreign officials and missions within the United States. The Act is based on the recommendations of the Advisory Panel on Overseas Security formed by the Secretary of State in July 1984. The Panel consisted of Admiral Bobby R. Inman (Chairman), Senator Warren B. Rudman, Congressman Daniel A. Mica, Ambassador Lawrence S. Eagleburger, Ambassador Anne L. Armstrong, Lieutenant General D'Wayne Gray and Messrs. Robert J. McGuire and Victor H. Dikeos (Executive Secretary).

The Act creates a comprehensive new framework for the enhanced security of official personnel and facilities. The framework consists of three complementary facets. The Act sets forth the responsibility of the Secretary of State with respect to the security of diplomatic operations at home and abroad, and additionally sets forth certain provisions relating to the Bureau of Diplomatic Security and the Diplomatic Security Service of the Department of State; it provides for the convening of boards of inquiry to examine issues of accountability in cases involving terrorist or security-related attacks against United States Government personnel or facilities abroad; and it provides authorization of appropriations necessary for the Department of State to carry out its responsibilities in the area of security and counterterrorism, and in particular to finance the acquisition of new missions overseas as recommended by the Advisory Panel on Overseas Security.

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TITLE I - DIPLOMATIC SECURITY

Section 101 - Responsibility of the Secretary of State

Subsection (a) of section 101 requires the Secretary of State to develop and implement, within the scope of resources made available, policies and programs to provide for the security of United States Government operations of a diplomatic nature and foreign government operations of a diplomatic nature in the United States. The subsection provides specific content to the formulation "operations of a diplomatic nature" by listing certain overseas and domestic security functions which are encompassed by the Secretary's responsibility.

With respect to overseas security, under paragraph (1) of this subsection the responsibility of the Secretary of State extends to the protection of all United States Government employees who are overseas on official duty (and their accompanying dependents), other than those under the command of a United States area military commander. The formulation used to describe the persons covered derives generally from section 207 of the Foreign Service Act of 1980, as amended (22 U.S.C. 3927), which specifies the persons who are under the direction and supervision of a United States chief of mission. Similarly, under paragraph (2) the Secretary's responsibility extends to the establishment and operation of security functions at all United States Government missions abroad, other than facilities or installations subject to the control of a United States area military commander.

On the domestic side, under paragraph (3) the responsibility of the Secretary of State embraces the establishment and operation of security functions at all Department of State facilities in the United States. It also extends, under paragraph (4), to the protection of foreign missions, international organizations and foreign officials and certain other foreign persons in the United States. As the phrase "as authorized by law" in paragraph (4) makes clear, the precise scope of the latter function is defined by other provisions of law on the subject, in particular section 37 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2709), which was recently enacted by section 125 of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987 (Public Law 99-93).

Section 101 also contains certain other provisions which are closely related to the matters described in subsection (a). Subsection (b) imposes an obligation on other Federal agencies to cooperate to the maximum extent possible with the Department

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of State to facilitate fulfillment of its security responsibilities. It also provides that for these purposes such agencies may render assistance, upon request and with or without reimbursement (as the agencies may agree), to the Department of State. It is expressly provided that such assistance may include the performance of overseas security functions by other agencies to the extent authorized by the Secretary of State. Assistance of this kind could be appropriate in circumstances, for example, involving the facilities of other agencies abroad. Subsection (b) also provides that the Department of State may furnish training assistance and related equipment, upon request and with or without reimbursement to host government personnel assigned to provide security for United States Government employees and missions abroad. Such assistance would be independent of existing programs for antiterrorism assistance under chapter 8 of Part II of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2349aa et seq.).

Subsection (c) makes clear that this Act does not limit the authority or responsibility of a chief of mission as set forth in section 207 of the Foreign Service Act of 1980, as amended (22 U.S.C. 3927). Similarly, subsection (d) makes clear that this Act does not limit the authority or responsibility of any other Federal, State or local agency with respect to law enforcement or domestic security operations.

The specific approval contained in subsection (e) for a lease of up to 250,000 square feet by the Administrator of General Services serves to expedite the process of accommodating the personnel needed by the Department of State to carry out its security-related responsibilities.

Section 102 - Bureau of Diplomatic Security

Subsection (a) of section 102 provides for the Bureau of Diplomatic Security of the Department of State to be headed by an Assistant Secretary of State. The appointment of the Assistant Secretary for Diplomatic Security would be made by the President with the advice and consent of the Senate, as is the case with the other Assistant Secretaries of State. Subsections (b) and (c) provide for technical conforming changes in the law made necessary by the increase in the number of Assistant Secretaries at the Department of State.

Section 103 - Diplomatic Security Service

Under subsection (a) of section 103, the Diplomatic Security Service of the Department of State is to be headed by a Director who shall be chosen by the Secretary of State, who

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shall come from the ranks of the career Senior Foreign Service or the career Senior Executive Service, who shall have qualifications appropriate for the position and who shall act under the supervision and direction of an Assistant Secretary of State.

Subsection (b) makes clear that the Diplomatic Security Service is to be staffed by drawing upon the existing Foreign Service and Civil Service personnel systems. Qualifications required for assignment or appointment to positions in the Diplomatic Security Service are to be prescribed by the Secretary of State. In the case of "Special Agents," the position qualifications may include minimum and maximum entry age limitations (e.g., 21 years minimum and 35 years maximum). Such limitations are commonly found in organizations having security-related responsibilities. In addition, the position qualifications for Special Agents must incorporate the standards required by law in order to carry out security functions and to exercise the law enforcement authorities available to such Special Agents. Section 37 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2709) provides for the Secretary to issue regulations governing activities of the Special Agents. In view of the fact that Special Agents perform a unique function -- they are directly involved in protecting lives and carry firearms in certain situations -- subsection (b) authorizes the Secretary to include in such regulations provisions for special disciplinary procedures to apply to Special Agents. Such procedures might, for example, pertain to the use of administrative leave (a common element of practice among organizations having security-related responsibilities).

Subsection (c) provides that the Diplomatic Security Service shall perform such functions as the Secretary of State may assign to it.

TITLE II -- PERFORMANCE AND ACCOUNTABILITY

Section 201 - Accountability Review

Section 201 instructs the Secretary of State to convene a board of inquiry, referred to as an Accountability Review Board (the "Board"), in any case involving serious injury, loss of life or significant destruction of property at or related to a United States Government mission abroad, other than a facility or installation subject to the control of a United States area military commander. The requirement does not, however, pertain

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to cases clearly involving only natural or other causes not related to security. It also does not pertain to cases in which there was clearly no breach of duty by a United States Government employee that contributed to such injury, loss of life or destruction of property.

Section 202 - Accountability Review Board

Under subsection (a) of section 202, a Board shall consist of three to five members designated by the Secretary of state, who also chooses the Chairperson of the Board. In addition, this subsection provides for an expansion of the Board in certain cases in which employees of agencies other than the Department of State are found to have been involved in the incident under review.

Subsection (b) deals with the issue of support services for the Board. The Board is to obtain all necessary facilities, services and supplies through the Department of State. The Board's expenses are also to be paid by the Department (except for the costs of a hearing under Section 206, which are to be borne by the agency employing the individual who has requested the hearing). In addition, the Board may retain the services of employees, experts and consultants who shall be responsible to the Board, may request that employees of other agencies be detailed to the Board, and may request assistance from an inspector general of the Department of State.

Section 203 - Procedures

Section 203 empowers the Board to make use of certain authorities of a procedural nature. In particular, under subsection (a) of this section, the Board may issue or authorize the issuance of a subpoena to obtain the testimony of witnesses and the production of documentary or other evidence from any person or agency. In the event of refusal to obey such a subpoena, the Board may apply to an appropriate United States district court for enforcement.

Under subsection (b), the Board shall adopt for administrative proceedings under this title (including any hearing under section 206) such procedures with respect to confidentiality as it deems necessary, to ensure in particular the protection of sensitive information relating to national defense, foreign policy or intelligence. Those procedures may pertain to the conduct of closed proceedings, for example, or to the submission and use of evidence in camera.

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Subsection (c) provides that the records relating to administrative proceedings under this title (including any hearing under section 206) must be maintained separately from all other records of the Department of State, that they must be adequately protected and that they shall be exempt from disclosure under the Freedom of Information Act. This subsection thus constitutes a statutory exemption of the kind referred to in paragraph (3) of section 552(b) of title 5, United States Code. Affected employees, however, would have such access to records concerning them as is authorized under the Privacy Act (5 U.S.C. 552a).

Section 204 - Findings

Section 204 requires the Board inquiring into an incident to make written findings of two kinds. First, the Board must determine whether there are reasonable grounds to believe that the injury, loss of life or destruction of property with respect to which the Board was convened was security-related. Second, the Board must determine whether there is probable cause (as that term is understood by United States courts) to believe that a breach of duty by an individual employee of the United States Government contributed to such injury, loss of life or destruction of property. The section specifies that in making its findings the Board is to consult and take into account all sources (such as statutes, regulations and instructions) relevant to the issue of work performance and official duty.

It should be noted that not all inquiries would present a Board with complicated factual circumstances or difficult judgments to make. In a case involving relatively few or relatively easy issues, the Board can -- and it is fully expected that it would -- move with correspondingly greater speed to complete the inquiry called for by this title.

Section 205 - Program Recommendations

When an Accountability Review Board is convened to investigate an incident involving injury, loss of life or destruction of property at a United States Government mission overseas, a principal purpose of its inquiry must be to enable the Department of State to take corrective action to avoid any such incident in the future. Accordingly, section 205 contemplates that the Board shall draw the necessary conclusions from its investigation and make appropriate recommendations to improve security and promote security awareness.

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Section 206 - Hearing Subject to the Administrative Procedure Act

There may be many cases in which a Board finds no probable cause to believe that any breach of duty by an employee contributed to the injury, loss of life or destruction of property involved in an incident. In such cases, the Board's inquiry ends with its written findings and program recommendations under the preceding two sections. However, in any case in which the Board makes an affirmative probable cause finding with respect to an individual employee, the Board's inquiry moves into a second phase, which is the subject of this section.

Under subsection (a) of section 206, the Board must promptly notify any employee with respect to whom it has made an affirmative probable cause finding. The only exception pertains to employees under the command of a United States area military commander. In a case involving such an employee, the Board must notify the head of the military service concerned with a recommendation that an appropriate investigatory or disciplinary proceeding be initiated. Such a proceeding is to be in lieu of the proceeding provided for in the remaining provisions of this section.

Subsection (b) provides that an employee who receives the notification referred to above is entitled to a hearing. this subsection makes certain provisions of the Administrative Procedure Act (sections 554(b) through 557 of title 5, United States Code) applicable to the hearing in order to ensure that the employee who confronts a grave allegation of the nature involved here has the benefit of the procedural protection afforded by that Act. Upon conclusion of the hearing, the presiding officer makes the initial decision and the Board makes the final decision in the case, determining whether and specifically how a breach of duty by the employees contributed to the injury, loss of life or property destruction in question.

Subsection (c) requires the Board to draw conclusions from its decision in the case and recommend to the Secretary of State or other agency head concerned disciplinary action as appropriate. In connection with its recommendation, the Board must also transmit a certified copy of the record of the proceeding. That record becomes the official record for purposes of any subsequent disciplinary action; however, it remains open to the employee to make additional written submissions to the Secretary or other agency head concerned.

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Subsection (d) makes clear that if an employee fails to file a request for a hearing within the time frame provided in subsection (b), the Board may proceed to make appropriate disciplinary recommendations, and the Secretary of State or other agency head concerned may take disciplinary action, without any hearing. Further, such a failure to file a timely request for a hearing will bar recourse by or on behalf of the employee involved to any administrative proceeding for relief in connection with the incident or inquiry.

Section 207 - Certain Agency Actions

Under subsection (a) of section 207, an employee who receives notification of an affirmative probable cause finding is to be placed on administrative leave for such period or periods as is determined by the Secretary of State or other agency head concerned to be consistent with the national interest. Such leave could be granted, for example, in a case in which the employee's continuing presence on the job was considered to constitute a risk to security; it might also be granted to permit the employee to participate in a hearing under section 206. Subsection (b) provides that within thirty days after a disciplinary recommendation is made by the Board, the Secretary or agency head must take action as deemed appropriate and inform the Board of such action. It should be noted that nothing in this title would preclude an agency from taking action with respect to an employee (e.g., a reassignment) under authorities other than this Act.

Section 208 - Transmission of Reports

Section 208 requires the Board to transmit promptly to the Secretary of State or other agency head concerned all of its findings, decisions and recommendations. The section also requires the Secretary or agency head to report promptly to the Congress on all recommendations of the Board and on any action taken with respect to those recommendations.

Section 209 - Exclusive Procedure

Section 209 makes clear that the procedure set forth in this title constitutes the only administrative procedure to be utilized in connection with an inquiry by an Accountability Review Board. In particular, an employee with respect to whom action is taken pursuant to this title may not utilize Foreign Service grievance procedures, Civil Service adverse action appeal procedures or any other similar administrative procedures to challenge such action.

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Section 210 - Judicial Review

Section 210 provides explicitly for judicial review of disciplinary action taken pursuant to this title. Such review would be undertaken by the appropriate United States district court in accordance with the standards set forth in chapter 7 of title 5 of the United States Code, relating to judicial review of agency action.

TITLE III - AUTHORIZATION OF APPROPRIATIONS

Section 301 - Authorization

The additional amounts authorized to be appropriated by section 301 will be used by the Department of State to carry out the purposes of this Act. In particular, the amounts of $520,828,000 and $420,625,000 for Fiscal Years 1986 and 1987, respectively, are for Salaries and Expenses. The amount of $3,177,441,000 without fiscal year limitation is for the multi-year foreign buildings program recommended by the Advisory Panel on Overseas Security.

Section 302 - Foreign Buildings Program

Section 302 requires the Foreign Buildings Office of the Department of State, in its implementation of the Act, to make maximum possible use of American contractors from the private sector to carry out the multi-year foreign buildings program to be funded from amounts authorized by section 301. The services to be provided by such contractors could include, for example, project management and control to ensure that individual projects are completed on schedule and within budget, as well as construction management inspection, testing and review.

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